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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,888	12/04/2000	James B. Copelan		7354

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05/07/2003

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EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 05/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/729,888

Applicant(s)

James Copelen

Examiner

Michael Brown

Group Art Unit

3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 9-16 and 18 is/are pending in the application.
Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 9-16 and 18 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 9-11 and 13-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zinreich.

Zinreich discloses in figures 1-5d a presurgical alerting device comprising a strip (the strip is made up of the markers shown in fig. 5b), a visually perceivable indicator (16, 18 and 20), a temporary attachment means (col. 3, lines 33-36), the strip is perforated (col. 3, lines 29-31), a peelable backing (12, 14a and 14b), a companion label 22, a method of attaching the strip to the body as recited in claim 15, a notification strip (the markers shown in fig. 5b), visually perceivable indicators (16 and 20), a temporary attachment means (col. 3, lines 33-36) a warning strip (one of 18), visually perceivable indicator (the remain sets of 18) and temporary attachment means (the adhesive as set forth above) as recited in claim 16.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zinreich in view of Keeton.

Zinreich discloses in figures 1-5d a pre-surgical alerting device, substantially as claimed. However, Zinreich does not disclose using the words "NO CUT". Keeton teaches in figures 1-3 using words to indicate what should or should not (the examiner is interpreting that if a medical attendant indicates what to operate on that person is also indicating what not to operate on) be operated on. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the words "NO CUT" or any other words as taught by Keeton could be substituted for one of the markers as disclosed by Zinreich in order to indicate an area that the surgeon should not operate on.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keeton in view of De Woskin, along with Zinreich.

Keeton teaches in figures 3-4 a pre-surgical alerting method comprising applying a skin-penetrating applique of a message warning against surgery to a body segment (using the label 42). The label has a pressure sensitive label that is covered by a backing. The examiner is interpreting

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the pressure sensitive label as an adhesive. However, if the applicant disagrees. De Woskin teaches in figures 1-3 an identification band comprising an adhesive. Zinreich, also teaches an adhesive (as set forth above). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the adhesive as taught by Woskin and Zinreich could be substituted for the pressure sensitive material as disclosed by Keeton because either attachment means could be used to attach the label to the patient. The examiner is interpreting that the adhesive will penetrate the user's skin.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
April 14, 2003

A handwritten signature in black ink, appearing to read "Michael A. Brown", with a long horizontal flourish extending to the right.

Michael A. Brown
Primary Examiner